IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.SASIDHARAN NAMBIAR

TUESDAY, THE 3RD JULY 2007 / 12TH ASHADHA 1929

RSA.No. 497 of 2007()

(AGAINST THE JUDGMENT DATED 21/11/2006 IN AS.33/2002 OF THE SUBORDINATE JUDGE, THIRUVALLA FILED AGAINST THE DECREE AND JUDGMENT IN OS.560/1996 OF THE MUNSIFF'S COURT, THIRUVALLA)

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APPELLANT (APPELLANT/PLAINTIFF):

ITTI GEORGE, S/O. GEORGE,
MYLANIKUNNATHIL, THATTAKKADU MURI,KOIPURAM VILLAGE
REPRESENTED BY POWER OF ATTORNEY HOLDER N.M.THOMAS,
NEERUMPLACKAL HOUSE, THATTAKKADU MURI,
KOIPURAM VILLAGE.

BY ADV. SRI.SATHISH NINAN
SRI.SANTHOSH MATHEW

RESPONDENTS: (RESPONDENTS/DEFENDANTS):

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1. **LEELAMMA, W/O. GEORGE,**
   SANKARAMANGALATHAYA PATHODIYIL KOIZHAKKE VEETTIL,
   THATTAKKADU MURI, KOIPURAM VILLAGE.

2. **ASHISH JACOB, -DO- -DO-.**

3. **ANISH GEORGE, -DO- -DO-.**

4. **P.K.KURUVILLA,**
   PATHODIYIL, KANNAMKODU MURI, ADOOR FROM PATHODIYIL
   KIZHAKKETHIL, THATTAKKADU MURI, KOIPURAM VILLAGE.

5. **ANNAMMA JACOB, D/O. KOSHY JACOB,**
   PATHODIYIL KIZHAKKETHIL HOUSE, THATTAKKADU MURI.

...2/-

6. SARAMMA JACOB, C/O.M.C.SAMUEL,
MULAMOOTTIL MANIMANDIR, THRIKKANNA MANGALAM,
KOTTARAKKARA P.O.

7. SUSAN JACOB, C/O. T.A. MATHEW,
THYPPARAMPIL, MATHOOR P.O., PATHANAMTHITTA.

8. SALI JACOB, W/O. JACOB,
PANODIYIL KIZHAKKETHIL HOUSE, THATTAKKADU MURI,
KOIPURAM VILLAGE.

9. ASHA JACOB,
PANODIYIL KIZHAKKETHIL HOUSE, THATTAKKADU MURI,
KOIPURAM VILLAGE.

10. NISHA JACOB,
PANODIYIL KIZHAKKETHIL HOUSE, THATTAKKADU MURI,
KOIPURAM VILLAGE.

11. LISHA JACOB,
PANODIYIL KIZHAKKETHIL HOUSE, THATTAKKADU MURI,
KOIPURAM VILLAGE.

BY

THIS REGULAR SECOND APPEAL HAVING COME UP FOR ADMISSION ON 03/07/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

M.SASIDHARAN NAMBIAR, J.

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R.S.A.No. 497 OF 2007

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DATED THIS THE 3rd DAY OF JULY, 2007

JUDGMENT

Plaintiff in O.S.560 of 1996 on the file of Munsiff Court, Tiruvalla is the appellant. Defendants are respondents. Suit was filed seeking a decree for declaration of title, possession and injunction. According to the appellant, plaint schedule property originally belonged to Kuruvila Mathew and under Ext.A2 sale deed it was purchased by the appellant and appellant has absolute right and possession over the plaint schedule property.

2. Respondents contended that the plaint schedule property originally belonged to Kuruvila Jacob husband of first respondent who mortgaged the property in favour of Abraham Mariamma and that mortgage right was purchased by first respondent and first respondent obtained the absolute right under sale deed 2960/1963. It is admitted fact that Kuruvila Mathew had filed O.S.119 of 1975 against Kuruvila Jacob claiming that he purchased the property and Kuruvila Jacob had filed O.S.184 of 1975 against Kuruvila Mathew. O.S.184 of 1975 was dismissed and O.S.119 of 1975 was decreed. As against the judgments in O.S.19 of 1975 and O.S.184 of 1975, A.S.15 of 1976 and A.S.16

of 1996 were filed. Both the judgments were disposed of under Ext.A9 judgment whereunder title and possession of Kuruvila Jacob was declared. Though second appeal was filed it was also dismissed confirming Ext.A9 judgment. Being an assignee of Kuruvila Mathew under Ext.A2, appellant cannot claim better title as Ext.A9 judgment is binding on the appellant. Appellant is therefore not entitled to contend that in spite of Ext.A9 judgment he has title. It is on that basis courts below non-suited the appellant.

3. Learned counsel appearing for appellant pointed out that in Ext.A9 judgment, first appellate court had referred about an application for amendment filed by Kuruvila Jacob whereunder it was admitted that Kuruvila Mathew, the assignor of the appellant under Ext.A2, had trespassed into the plaint schedule property and court considered only the question of possession as on the date of filing of the suit and therefore Ext.A9 judgment cannot be used for holding that appellant has no possession of the plaint schedule property. As found by the courts below, under Ext.A9 judgment it was not only the title of

Kuruvila Jacob, but his possession over the plaint schedule property was declared. In such circumstances, when Ext.A9 is binding on the appellant, appellant is not entitled to contend that the declaratory decree in Ext.A9 judgment is not binding on him. If that be so, appellant is not entitled to the decree sought for. There is no substantial question of law involved in the appeal. It is dismissed in limine.

M.SASIDHARAN NAMBIAR, JUDGE

lgk/-